

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

HOT TOPIC, INC. and
HOT TOPIC INC.
WELFARE BENEFIT PLAN

v.

Case No. 1:20-cv-00217-LG-RPM

CARYN SUZANNE
MACFADDEN
As the Parent and Legal
Guardian of E.M.

Consolidated with

IN THE MATTER OF THE
GUARDIANSHIP OF E.M.
By and through mother and next
Friend, Caryn Suzanne Macfadden

v.

UNITED HEALTHCARE
SERVICES, INC.

MOTION TO SUBSTITUTE REAL PARTY IN INTEREST

Comes now Caryn Suzanne Macfadden, as Mother and Next Friend of E.M., by and through undersigned counsel and pursuant to Federal Rule of Civil Procedure 25(c) and files this Motion for an Order substituting Emily Macfadden for Caryn Suzanne Macfadden as mother and next friend of E.M., as the real party in interest now that Emily Macfadden has reached the age of majority, and in support thereof would show as follows:

1. On or about May 6, 2019, Emily Macfadden, (hereinafter referred to as “Emily”) a minor at the time under Mississippi law, was injured as a result of an

automobile accident that occurred in Biloxi, Mississippi (the “Accident”). On or about May 15, 2019, a Guardianship was opened in the Harrison County Chancery Court, Second Judicial District, and approval was given to pursue a legal action for personal injuries sustained by Emily in the accident.

2. A personal injury settlement was subsequently negotiated subject to Chancery Court approval on Emily’s behalf from the liability insurer of the third-party tortfeasor involved in the Accident.

3. On May 21, 2020, the Chancery Court entered an Order approving the Minor’s Settlement and reserving certain “made-whole” issues regarding liens and subrogation claims for a later determination. Pursuant to the Chancery Court Order, the settlement funds were deposited into Russell S. Gill, PLLC, counsel for Plaintiff’s, trust account.

4. On July 2, 2020, prior to the “made-whole” hearing, Hot Topic, Inc. and the Hot Topic Inc. Welfare Benefit Plan filed a Complaint in the United States District Court for the Southern District of Mississippi, Case No. 1:20-cv-00217, seeking to assert its subrogation claim for benefits against the settlement proceeds in the amount of \$250,000.00 being held in trust.

5. On July 6, 2020, and prior to the “made-whole” Hearing set for July 8, 2020, United Healthcare Services, Inc. removed the entire Guardianship in the Chancery Court Matter to this Court and filed a Notice of Related Proceeding. [Doc. 1].

6. On July 15, 2020, this Court consolidated the Hot Topic lawsuit with the removed action. [Doc. 3].

7. On August 2, 2020, Emily Macfadden turned 21 years of age and attained the age of majority, and pursuant to Miss. Code. Ann. § 93-20-210(1)(a), the Guardianship was terminated by operation of law, because of Emily's "attainment of majority". Emily, now being an adult, and no longer being represented by and through the Guardianship, is the real party in interest in the pending Federal matter.

8. If Emily is substituted as the real party in interest, the action will proceed "as if it had originally been commenced by [her]." Federal Rule of Civil Procedure 17(a)(3). Further, the parties herein have agreed to a settlement in the amount of \$36,000.00, to which Emily consents, to be paid from the settlement funds being held in the Russell S. Gill, PLLC trust account.

WHEREFORE, for the reasons discussed herein, Caryn Suzanne Macfadden, as mother and next friend of E.M. respectfully requests that the Court enter an Order substituting Emily Macfadden as the real party in interest in place of Caryn Suzanne Macfadden, as mother and next friend of E.M.

DATED, this the 8th day of September, 2020.

Respectfully Submitted,

CARYN SUZANNE MACFADDEN,
Mother and Next Friend of E.M.

By: /s/ Russell S. Gill
RUSSELL S. GILL, ESQ. (MS Bar # 4840)
638 Howard Avenue
Biloxi, Mississippi 39530
Telephone: (228) 432-0007
Facsimile: (228) 432-0025
rsgill@rsgill-lawfirm.com

CERTIFICATE OF SERVICE

I do hereby certify that I electronically filed notice of the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to all registered attorneys:

Christine Whitman, Esq.
PHELPS DUNBAR LLP
2602 13th Street, Ste. 300
Gulfport, Mississippi 39501
Telephone: 228-679-1130
christine.whitman@phelps.com

SO CERTIFIED this the 8th day of September, 2020.

/s/ Russell S. Gill
RUSSELL S. GILL, (MS Bar # 4840)